

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

D/B

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LORETTA M. CERBELLI, as ADMINISTRATRIX of the :
Estate of KEVIN C. CERBELLI, deceased, :

99-CV-6846 (ARR)(RML)

Plaintiff, :

ORDER

-against- :

THE CITY OF NEW YORK, et al. :

Defendants. :
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ROSS, United States District Judge:

The court has received the Report and Recommendation on the instant case, dated September 8, 2008, from the Honorable Robert M. Levy, United States Magistrate Judge. No objections have been filed. Accordingly, the court has reviewed the Report and Recommendation for clear error on the face of the record. See Advisory Comm. Notes to Fed. R. Civ. P. 72(b); accord Edwards v. Town of Huntington, No. 05 Civ. 339 (NGG) (AKT), 2007 U.S. Dist. LEXIS 50074, at *6 (E.D.N.Y. July 11, 2007); McKoy v. Henderson, No. 05 Civ. 1535 (DAB), 2007 U.S. Dist. LEXIS 15673, at *1 (S.D.N.Y. March 5, 2007). Having reviewed the record, I find no clear error. I hereby adopt the Report and Recommendation, in its entirety, as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1).

Therefore, the summary judgment motions are granted in part and denied in part, as follows. With respect to plaintiff's §1983 claim, the summary judgment motion of Police Officer James Williams is granted and the summary judgment motions of Police Officers Paul Valdes and Robert Ehmer are denied. With respect to plaintiff's Monell claims, the summary judgment motions of the City of New York, Lt. William McBride, and Sgt. Michael Barreto are granted.

With respect to plaintiff's New York State law negligence claim, summary judgment is granted to each of these defendants. With respect to plaintiff's assault claims, the summary judgment motions of Lt. McBride, Sgt. Barreto, and Officer Williams are granted in their entirety, and the summary judgment motions of Officers Valdes and Ehmer are granted only with regard to their pointing their guns at Kevin Cerbelli but are denied insofar as they stem from these officers' decisions to open fire on him. With respect to plaintiff's battery claims, the summary judgment motions of Lt. McBride, Sgt. Barreto, and Officer Williams are granted in their entirety, and the summary judgment motions of Officers Valdes and Ehmer are denied insofar as they stem from the officers' decisions to open fire. Finally, with respect to plaintiff's wrongful death claim, the motion for summary judgment is denied.

SO ORDERED.

s/ ARR

Allyne R. Ross
United States District Judge

Dated: September 30, 2008
Brooklyn, New York

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cc: **Magistrate Judge Levy**